IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 43 OF 1997

Gajanan Shankar Inamdar ...Appellant

Versus

Bapu Tatya Shinde & Ors. ...Respondents

.....

Mr. R.S. Kate, Advocate for the Appellant

Mr. M.B. Baadkar, Advocate for Respondents 1 to 7.

.....

CORAM: A.S. OKA, J.

DATED: 12TH JANUARY, 2005

P.C.:-

1. Heard Shri. Kate, the learned advocate for the Appellant and Shri. Baadkar for Respondent Nos. 1 to 7.

2. Shri. Kate has submitted that the appeal filed by the Respondent No.1 before the District Court was not maintainable as the Appeal is purportedly filed under Section 96 of the Code of Civil Procedure, 1908. He submitted that an Appeal from Order under Order 43 of the said Code ought to have been preferred against the order passed by the trial Court. He submitted that the Appellate Court committed an error by holding that the order passed by the authorities under the Maharashtra Agricultural

Lands (Ceiling on Holdings) Act 1959 is a nullity. He therefore submitted that the judgment and decree passed by the appellate Court was illegal.

3. It is an admitted position that the order passed by the trial Court was an appealable order before the District Court. The appeal was numbered as a Regular Civil Appeal as if it was an appeal preferred against the decree passed by the trial Court. If objection would have been raised by the Appellant before the District Court the same could have been converted into Civil Miscellaneous Appeal under order 43. But no such objection was raised. In this view of the matter, there is no merit in his first contention.

4. In so far as the second contention is concerned the finding recorded by the appellate Court is that the original Defendant No.2 Anna Khande was not at all a tenant and therefore, the authorities under the Ceiling Act could not have recorded a finding that the Defendant No.2 Anna was holding surplus land. It is for this reason the appellate Court has held that the order passed by the authority under the Ceiling Act is a nullity. No fault can be found with the said findings recorded by the appellate Court.

5. If the said order is a nullity, all consequential actions taken on the basis of the said order must be

held to be illegal. Hence, the original Plaintiff who claims on the the basis of the registered sale deed executed by the Defendant No.1 who was the original owner is held entitled to possession.

6. No substantial question of law arises. The learned advocate for the Respondent No.1 to 7 stated that the impugned judgment and decree passed by the appellate Court on 8.7.96 has been already executed.

7. Appeal is dismissed with no order as to costs.